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NOTICE OF ALLOWANCE AND FEE(S) DUE

7590 08/08/2002

JENNIFER WAHLSTEN  
RAE-VENTER LAW GROUP, P.C.  
260 SHERIDAN AVE, SUITE 440  
PALO ALTO, CA 94306

EXAMINER	
NELSON, AMY J	
ART UNIT	CLASS-SUBCLASS
1638	800-278000

DATE MAILED: 08/08/2002

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/984,099	12/03/1997	KEVIN MCBRIDE	CGNE-115-I-U	1773

TITLE OF INVENTION: COTTON FIBER TRANSCRIPTIONAL FACTORS

APPLN. TYPE	SMALL ENTITY	ISSUE FEE	PUBLICATION FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	NO	\$1280	\$0	\$1280	11/08/2002

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- ☐ Applicant claims SMALL ENTITY status.  
See 37 CFR 1.27.

II. PART B - FEE(S) TRANSMITTAL should be completed and returned to the United States Patent and Trademark Office (USPTO) with your ISSUE FEE and PUBLICATION FEE (if required). Even if the fee(s) have already been paid, Part B - Fee(s) Transmittal should be completed and returned. If you are charging the fee(s) to your deposit account, section "4b" of Part B - Fee(s) Transmittal should be completed and an extra copy of the form should be submitted.

III. All communications regarding this application must give the application number. Please direct all communications prior to issuance to Box ISSUE FEE unless advised to the contrary.

**IMPORTANT REMINDER:** Utility patents issuing on applications filed on or after Dec. 12, 1980 may require payment of maintenance fees. It is patentee's responsibility to ensure timely payment of maintenance fees when due.

# **PART B - FEE(S) TRANSMITTAL**

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Washington, D.C. 20231  
Fax (703)746-4000**

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CURRENT CORRESPONDENCE ADDRESS (Note: Legibly mark-up with any corrections or use Block 1)

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Note: A certificate of mailing can only be used for domestic mailings of the Fee(s) Transmittal. This certificate cannot be used for any other accompanying papers. Each additional paper, such as an assignment or formal drawing, must have its own certificate of mailing or transmission.

## **Certificate of Mailing or Transmission**

I hereby certify that this Fee(s) Transmittal is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to the Box Issue Fee address above, or being facsimile transmitted to the USPTO, on the date indicated below.

(Depositor's name)
(Signature)
(Date)

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EXAMINER	ART UNIT	CLASS-SUBCLASS
NELSON, AMY J	1638	800-278000

1. Change of correspondence address or indication of "Fee Address" (37 CFR 1.363).

- ☐ Change of correspondence address (or Change of Correspondence Address form PTO/SB/122) attached.
- ☐ "Fee Address" indication (or "Fee Address" Indication form PTO/SB/47; Rev 03-02 or more recent) attached. **Use of a Customer Number is required.**

2. For printing on the patent front page, list (1) the names of up to 3 registered patent attorneys or agents OR, alternatively, (2) the name of a single firm (having as a member a registered attorney or agent) and the names of up to 2 registered patent attorneys or agents. If no name is listed, no name will be printed.

1 \_\_\_\_\_  
2 \_\_\_\_\_  
3 \_\_\_\_\_

## **3. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type)**

PLEASE NOTE: Unless an assignee is identified below, no assignee data will appear on the patent. Inclusion of assignee data is only appropriate when an assignment has been previously submitted to the USPTO or is being submitted under separate cover. Completion of this form is NOT a substitute for filing an assignment.

(A) NAME OF ASSIGNEE

(B) RESIDENCE: (CITY and STATE OR COUNTRY)

Please check the appropriate assignee category or categories (will not be printed on the patent) ☐ individual ☐ corporation or other private group entity ☐ government

4a. The following fee(s) are enclosed:

- ☐ Issue Fee
- ☐ Publication Fee
- ☐ Advance Order - # of Copies \_\_\_\_\_

4b. Payment of Fee(s):

- ☐ A check in the amount of the fee(s) is enclosed.
- ☐ Payment by credit card. Form PTO-2038 is attached.
- ☐ The Commissioner is hereby authorized by charge the required fee(s), or credit any overpayment, to Deposit Account Number \_\_\_\_\_ (enclose an extra copy of this form).

Commissioner for Patents is requested to apply the Issue Fee and Publication Fee (if any) or to re-apply any previously paid issue fee to the application identified above.

(Authorized Signature)

(Date)

NOTE: The Issue Fee and Publication Fee (if required) will not be accepted from anyone other than the applicant; a registered attorney or agent; or the assignee or other party in interest as shown by the records of the United States Patent and Trademark Office.

This collection of information is required by 37 CFR 1.311. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, Washington, D.C. 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, Washington, DC 20231.

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			ART UNIT	PAPER NUMBER
			1638	
DATE MAILED: 08/08/2002				

**Determination of Patent Term Extension under 35 U.S.C. 154 (b)**  
(application filed after June 7, 1995 but prior to May 29, 2000)

The patent term extension is 0 days. Any patent to issue from the above identified application will include an indication of the 0 day extension on the front page.

If a continued prosecution application (CPA) was filed in the above-identified application, the filing date that determines patent term extension is the filing date of the most recent CPA.

Applicant will be able to obtain more detailed information by accessing the Patent Application Information Retrieval (PAIR) system. (<http://pair.uspto.gov>)



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## Notice of Possible Fee Increase on October 1, 2002

If a reply to a "Notice of Allowance and Fee(s) Due" is filed in the Office on or after October 1, 2002, then the amount due may be higher than that set forth in the "Notice of Allowance and Fee(s) Due" since there may be an increase in fees effective on October 1, 2002. See Revision of Patent and Trademark Fees for Fiscal Year 2003; Notice of Proposed Rulemaking, 67 Fed. Reg. 30634, 30636 (May 7, 2002). Although a change to the amount of the publication fee is not currently proposed for October 2002, if the issue fee or publication fee is to be paid on or after October 1, 2002, applicant should check the USPTO web site for the current fees before submitting the payment. The USPTO Internet address for the fee schedule is: <http://www.uspto.gov/main/howtofees.htm>.

If the issue fee paid is the amount shown on the "Notice of Allowance and Fee(s) Due," but not the correct amount in view of any fee increase, a "Notice to Pay Balance of Issue Fee" will be mailed to applicant. In order to avoid processing delays associated with mailing of a "Notice to Pay Balance of Issue Fee," if the response to the Notice of Allowance and Fee(s) due form is to be filed on or after October 1, 2002 (or mailed with a certificate of mailing on or after October 1, 2002), the issue fee paid should be the fee that is required at the time the fee is paid. If the issue fee was previously paid, and the response to the "Notice of Allowance and Fee(s) Due" includes a request to apply a previously-paid issue fee to the issue fee now due, then the difference between the issue fee amount at the time the response is filed and the previously paid issue fee should be paid. See Manual of Patent Examining Procedure, Section 1308.01 (Eighth Edition, August 2001).

Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at (703) 305-8283.

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(Depositor's name)
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**Notice of Fee Increase on October 1, 2002**

If a reply to a "Notice of Allowance and Fee(s) Due" is filed in the Office on or after October 1, 2002, then the amount due may be higher than that set forth in the "Notice of Allowance and Fee(s) Due" since there will be an increase in fees effective on October 1, 2002. See Revision of Patent and Trademark Fees for Fiscal Year 2003: Notice of Proposed Rulemaking, 67 Fed. Reg. 30634, 30636 (May 7, 2002). Although a change to the amount of the publication fee is not currently proposed for October 2002, if the issue fee or publication fee is to be paid on or after October 1, 2002, applicant should check the USPTO web site for the current fees before submitting the payment. The USPTO Internet address for the fee schedule is: <http://www.uspto.gov/main/howtofees.htm>.

If the issue fee paid is the amount shown on the "Notice of Allowance and Fee(s) Due," but not the correct amount in view of the fee increase, a "Notice to Pay Balance of Issue Fee" will be mailed to applicant. In order to avoid processing delays associated with mailing of a "Notice to Pay Balance of Issue Fee," if the response to the Notice of Allowance and Fee(s) due form is to be filed on or after October 1, 2002 (or mailed with a certificate of mailing on or after October 1, 2002), the issue fee paid should be the fee that is required at the time the fee is paid. If the issue fee was previously paid, and the response to the "Notice of Allowance and Fee(s) Due" includes a request to apply a previously-paid issue fee to the issue fee now due, then the difference between the issue fee amount at the time the response is filed and the previously paid issue fee should be paid. See Manual of Patent Examining Procedure, Section 1308.01 (Eighth Edition, August 2001).

Effective October 1, 2002, 37 CFR 1.18 is proposed to be revised to change the patent issue fees as set forth below. As stated above, the final fees may be a different amount, and applicant should check the web site given above when paying the fee.

(a) Issue fee for issuing each original or reissue patent, except a design or plant patent:

By a small entity (Sec. 1.27(a))--\$655.00

By other than a small entity--\$1,310.00

(b) Issue fee for issuing a design patent:

By a small entity (Sec. 1.27(a))--\$235.00

By other than a small entity--\$470.00

(c) Issue fee for issuing a plant patent:

By a small entity (Sec. 1.27(a))--\$315.00

By other than a small entity--\$630.00

Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at (703) 305-8283.

# **PART B - FEE(S) TRANSMITTAL**

**Complete and send this form, together with applicable fee(s), to: Mail Box ISSUE FEE  
Commissioner for Patents  
Washington, D.C. 20231  
Fax (703)746-4000**

**INSTRUCTIONS:** This form should be used for transmitting the ISSUE FEE and PUBLICATION FEE (if required). Blocks 1 through 4 should be completed where appropriate. All further correspondence including the Patent, advance orders and notification of maintenance fees will be mailed to the current correspondence address as indicated unless corrected below or directed otherwise in Block 1, by (a) specifying a new correspondence address; and/or (b) indicating a separate "FEE ADDRESS" for maintenance fee notifications.

**CURRENT CORRESPONDENCE ADDRESS** (Note: Legibly mark-up with any corrections or use Block 1)  
7590 08/08/2002

**JENNIFER WAHLSTEN  
RAE-VENTER LAW GROUP, P.C.  
260 SHERIDAN AVE, SUITE 440  
PALO ALTO, CA 94306**

Note: A certificate of mailing can only be used for domestic mailings of the Fee(s) Transmittal. This certificate cannot be used for any other accompanying papers. Each additional paper, such as an assignment or formal drawing, must have its own certificate of mailing or transmission.

## **Certificate of Mailing or Transmission**

I hereby certify that this Fee(s) Transmittal is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to the Box Issue Fee address above, or being facsimile transmitted to the USPTO, on the date indicated below.

(Depositor's name)
(Signature)
(Date)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/984,099	12/03/1997	KEVIN MCBRIDE	CGNE-115-1-U	1773

**TITLE OF INVENTION:** COTTON FIBER TRANSCRIPTIONAL FACTORS

APPLN. TYPE	SMALL ENTITY	ISSUE FEE	PUBLICATION FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	NO	\$1280	\$0	\$1280	11/08/2002

EXAMINER	ART UNIT	CLASS-SUBCLASS
NELSON, AMY J	1638	800-278000

**1. Change of correspondence address or indication of "Fee Address" (37 CFR 1.363).**

- ☐ Change of correspondence address (or Change of Correspondence Address form PTO/SB/122) attached.  
☐ "Fee Address" indication (or "Fee Address" Indication form PTO/SB/47; Rev 03-02 or more recent) attached. **Use of a Customer Number is required.**

**2. For printing on the patent front page, list (1) the names of up to 3 registered patent attorneys or agents OR, alternatively, (2) the name of a single firm (having as a member a registered attorney or agent) and the names of up to 2 registered patent attorneys or agents. If no name is listed, no name will be printed.**

1	_____
2	_____
3	_____

## **3. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type)**

**PLEASE NOTE:** Unless an assignee is identified below, no assignee data will appear on the patent. Inclusion of assignee data is only appropriate when an assignment has been previously submitted to the USPTO or is being submitted under separate cover. Completion of this form is NOT a substitute for filing an assignment.

**(A) NAME OF ASSIGNEE**

**(B) RESIDENCE: (CITY and STATE OR COUNTRY)**

Please check the appropriate assignee category or categories (will not be printed on the patent) ☐ individual ☐ corporation or other private group entity ☐ government

**4a. The following fee(s) are enclosed:**

**4b. Payment of Fee(s):**

- ☐ Issue Fee  
☐ Publication Fee  
☐ Advance Order - # of Copies \_\_\_\_\_

- ☐ A check in the amount of the fee(s) is enclosed.  
☐ Payment by credit card. Form PTO-2038 is attached.  
☐ The Commissioner is hereby authorized by charge the required fee(s), or credit any overpayment, to Deposit Account Number \_\_\_\_\_ (enclose an extra copy of this form).

Commissioner for Patents is requested to apply the Issue Fee and Publication Fee (if any) or to re-apply any previously paid issue fee to the application identified above.

(Authorized Signature)

(Date)

**NOTE:** The Issue Fee and Publication Fee (if required) will not be accepted from anyone other than the applicant; a registered attorney or agent; or the assignee or other party in interest as shown by the records of the United States Patent and Trademark Office.

This collection of information is required by 37 CFR 1.311. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, Washington, D.C. 20231. **DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, Washington, DC 20231.**

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

**TRANSMIT THIS FORM WITH FEE(S)**

# Notice of Allowability

Application No.  
**08/984,099**

Applicant(s)  
**Kevin McBride, et al.**

Examiner  
**Amy Nelson**

Art Unit  
**1638**



--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course.

**THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to amendment filed 6/19/02.

2. ☒ The allowed claim(s) is/are Claims 1-10, 12-16, 18-26, 28, 30-33, 36, 37, 42, 44-55, 59, 65, and 66.

RENUMBERED as claims 1-9, 28, 29, 36, 37, 40-47, 30, 31, 24, 25, 4, 14-22, 32, 33, 23, 10-16, 34, 35, 39, 39, 17, 18, 26, 27)

3. ☐ The drawings filed on \_\_\_\_\_ are accepted by the Examiner.

4. ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a) ☐ All b) ☐ Some\* c) ☐ None of the:

1. ☐ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_.

5. ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

(a) ☐ The translation of the foreign language provisional application has been received.

6. ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application. **THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

7. ☒ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.

8. ☒ CORRECTED DRAWINGS must be submitted.

(a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached

1) ☐ hereto or 2) ☐ to Paper No. \_\_\_\_\_.

(b) ☐ including changes required by the proposed drawing correction filed \_\_\_\_\_, which has been approved by the examiner.

(c) ☒ including changes required by the attached Examiner's Amendment/Comment or in the Office action of Paper No. 19.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the top margin (not the back) of each sheet. The drawings should be filed as a separate paper with a transmittal letter addressed to the Official Draftsperson.

9. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

## Attachment(s)

1 ☒ Notice of References Cited (PTO-892)

3 ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

5 ☐ Information Disclosure Statement(s) (PTO-1449), Paper No(s). \_\_\_\_\_

7 ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material

9 ☐ Other

2 ☐ Notice of Informal Patent Application (PTO-152)

4 ☒ Interview Summary (PTO-413), Paper No 27,30.

6 ☒ Examiner's Amendment/Comment

8 ☒ Examiner's Statement of Reasons for Allowance

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Application/Control Number: 08/984,099

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### EXAMINER'S AMENDMENT

1. An extension of time under 37 CFR 1.136(a) is required in order to make an examiner's amendment which places this application in condition for allowance. During a telephone conversation conducted on July 16, 2002, Alissa Eagle requested an extension of time for 1 MONTH(S) and authorized the Commissioner to charge Deposit Account No. 13-4125 the required fee of \$520 for this extension and authorized the following examiner's amendment. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

2. The application has been amended as follows:

In the Claims:

Claims 34, 35, 38, 39, 57, 67 and 68 have been canceled. ✓

I' Claim 1 (six times amended). A recombinant DNA sequence comprising as operably joined components in the direction of transcription, a cotton fiber transcriptional initiation region functional in a cotton fiber cell and an open reading frame encoding [a protein] an enzyme in a pigment biosynthesis pathway, wherein said transcriptional initiation region is selected from the group consisting of:

a. nucleotides 65-4163 of SEQ ID NO:7, and

b. SEQ ID NO:15.

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I2 <sup>28</sup>  
Claim <sup>28</sup>9 (twice amended). A DNA construct comprising [a] the DNA sequence of  
Claim 1.

I3 <sup>36</sup>  
Claim <sup>36</sup>12 (twice amended). A cotton plant cell comprising the DNA construct of Claim <sup>28</sup>9.  
<sup>37</sup>  
Claim <sup>37</sup>13 (twice amended). A cotton plant comprising the cell of Claim <sup>36</sup>12.

<sup>40</sup>  
Claim <sup>40</sup>14 (five times amended). A method of modifying fiber color in a cotton plant, said  
method comprising:

I4  
transforming a cotton plant cell with a DNA construct comprising a DNA sequence  
comprising i) a sequence selected from the group consisting of SEQ ID NO:15 and  
nucleotides 65-4163 of SEQ ID NO:7, and ii) an open reading frame encoding a protein selected  
from the group consisting of tyrosinase, tryptophanase and indole oxygenase;

regenerating a cotton plant comprising fiber tissue from said cotton plant cell, wherein  
said fiber tissue comprises a substrate for said protein, and wherein said protein reacts with said  
substrate to produce a pigment, whereby the color of said fiber is modified.

I5 <sup>43</sup>  
Claim <sup>43</sup>18 (four times amended). [The method of Claim 16 wherein said plant cell is  
further transformed] A method of modifying fiber color in a cotton plant, said method  
comprising:

transforming a cotton plant cell with a first DNA construct comprising a DNA sequence  
comprising i) a sequence selected from the group consisting of SEQ ID NO:15 and  
nucleotides 65-4163 of SEQ ID NO:7, and ii) an open reading frame encoding a protein selected  
from the group consisting of tyrosinase, tryptophanase and indole oxygenase;

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<sup>28</sup>  
transforming said cotton plant cell with a second DNA construct according to Claim 9 or

and regenerating a cotton plant comprising fiber tissue from said cotton plant cell,

wherein said fiber tissue comprises a substrate for said protein, and wherein said protein reacts

with said substrate to produce a pigment, whereby the color of said fiber is modified, and

wherein the open reading frame of the DNA sequence from the first DNA construct encodes a

different protein than the open reading frame of the second DNA construct.

<sup>44</sup>  
Claim <sup>43</sup>~~19~~ (amended). The method of Claim ~~18~~ wherein said pigment is melanin and said

<sup>I6</sup>  
[proteins are encoded by] open reading frames are *tyrA* and ORF438.

<sup>45</sup>  
Claim <sup>43</sup>~~20~~ (amended). The method of Claim ~~18~~ wherein said pigment is indigo and said

[proteins are encoded by] open reading frames are *tna* and *pig*.

<sup>I7</sup>  
Claim <sup>47</sup>~~22~~ (twice amended). The method of Claim <sup>40</sup>~~14~~ wherein said fiber tissue is [obtained

from a cotton] in the burr.

<sup>I8</sup>  
Claim <sup>10</sup>~~44~~ (five times amended). A recombinant DNA sequence comprising as operably

joined components in the direction of transcription: a transcriptional initiation region functional in a cotton plant cell and an open reading frame encoding an enzyme in a biosynthetic pathway of melanin or indigo, wherein said transcriptional initiation region is selected from the group consisting of:

a. nucleotides 65-4163 of SEQ ID NO:7, and

b. SEQ ID NO:15.

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I9  
Claim <sup>24</sup>~~51~~ (twice amended). [The] A DNA construct comprising the DNA sequence of  
Claim <sup>10</sup>~~44~~.

I10  
34  
51.  
Claim <sup>38</sup>~~53~~ (twice amended). A cotton plant cell comprising the DNA construct of Claim

Claim <sup>39</sup>~~54~~ (twice amended). A cotton plant comprising the plant cell of Claim <sup>38</sup>~~53~~.

I11  
18  
Claim <sup>18</sup>~~59~~ (thrice amended). [A] An isolated DNA sequence comprising a transcriptional  
initiation region functional in a cotton plant cell, wherein said transcriptional incitation region is  
selected from the group consisting of:

- a. nucleotides 65-4163 of SEQ ID NO:7, and
- b. SEQ ID NO:15.

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3. The following is an examiner's statement of reasons for allowance:

A sequence search revealed that SEQ ID NO:15 is identical to the rac13 5' upstream sequence disclosed in Figure 5 of WO 96/40924 and enabled as a promoter in Example 1 of U.S. Patent 6,166,301. Hence, SEQ ID NO:15, as disclosed in the instant application is enabled as a promoter *per se*. The 4-4 5' upstream region comprising nucleotides 65-4163 of SEQ ID NO:7 is enabled as a promoter by the combined teachings of Examples 5, 7, and 9 in the instant specification, as clarified in Applicant's response filed 2/19/02. Furthermore, because the 4-4 cDNA sequence of SEQ ID NO:1 was used as a probe to isolate the genomic clone comprising the promoter of SEQ ID NO:7, and the Rac13 cDNA sequence of SEQ ID NO:12 was used as a probe to isolate the genomic clone comprising the promoter of SEQ ID NO:15 (see Examples 2 and 4), the isolated DNA sequences of SEQ ID NO:1 and SEQ ID NO:12 are likewise enabled by the instant specification.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

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***Oath/Declaration***

4. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

It does not state that the person making the oath or declaration in a continuation-in-part application filed under the conditions specified in 35 U.S.C. 120 which discloses and claims subject matter in addition to that disclosed in the prior copending application, acknowledges the duty to disclose to the Office all information known to the person to be material to patentability as defined in 37 CFR 1.56 which occurred between the filing date of the prior application and the national or PCT international filing date of the continuation-in-part application.

Although Applicant has satisfied the duty to disclose requirement with respect to U.S.

Application Serial No. 08/480,178, Applicant has not satisfied the requirement with respect to PCT Application PCT/US96/09897, of which the instant application is a continuation-in-part application.

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5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amy J. Nelson whose telephone number is (703) 306-3218. The examiner can normally be reached on Monday-Friday from 8:30 AM - 5:00 PM.

The fax phone number for this Group is (703) 308-4242 or (703) 305-3014.

Any inquiry of a general nature or relating to the status of this application, or if the examiner cannot be reached as indicated above, should be directed to the legal analyst, Gwendolyn Payne, whose telephone number is (703) 305-2475.



**AMY J. NELSON, PH.D  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600**

Amy J. Nelson, Ph.D.

July 17, 2002

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# Notice of Allowability

Application No.

08/984,099

Applicant(s)

Kevin McBride, et al.

Examiner

Amy Nelson

Art Unit

1638

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to amendment filed 6/19/02.
2. ☒ The allowed claim(s) is/are Claims 1-10, 12-16, 18-26, 28, 30-33, 36, 37, 42, 44-55, 59, 65, and 66.  
Renumbered to claims 1-8, 28, 29, 36, 37, 40-47, 50, 51, 54, 55, 59, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 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2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2

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**EXAMINER'S AMENDMENT**

1. An extension of time under 37 CFR 1.136(a) is required in order to make an examiner's amendment which places this application in condition for allowance. During a telephone conversation conducted on July 16, 2002, Alissa Eagle requested an extension of time for 1 MONTH(S) and authorized the Commissioner to charge Deposit Account No. 13-4125 the required fee of \$520 for this extension and authorized the following examiner's amendment. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

2. The application has been amended as follows:

**In the Claims:**

Claims 34, 35, 38, 39, 57, 67 and 68 have been canceled.

Claim 1 (six times amended). A recombinant DNA sequence comprising as operably joined components in the direction of transcription, a cotton fiber transcriptional initiation region functional in a cotton fiber cell and an open reading frame encoding [a protein] an enzyme in a pigment biosynthesis pathway, wherein said transcriptional initiation region is selected from the group consisting of:

- a. nucleotides 65-4163 of SEQ ID NO:7, and
- b. SEQ ID NO:15.

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Claim 9 (twice amended). A DNA construct comprising [a] the DNA sequence of Claim 1.

Claim 12 (twice amended). A cotton plant cell comprising the DNA construct of Claim 9.

Claim 13 (twice amended). A cotton plant comprising the cell of Claim 12.

Claim 14 (five times amended). A method of modifying fiber color in a cotton plant, said method comprising:

transforming a cotton plant cell with a DNA construct comprising a DNA sequence comprising i) a sequence selected from the group consisting of SEQ ID NO:15 and nucleotides 65-4163 of SEQ ID NO:7, and ii) an open reading frame encoding a protein selected from the group consisting of tyrosinase, tryptophanase and indole oxygenase;

regenerating a cotton plant comprising fiber tissue from said cotton plant cell, wherein said fiber tissue comprises a substrate for said protein, and wherein said protein reacts with said substrate to produce a pigment, whereby the color of said fiber is modified.

Claim 18 (four times amended). [The method of Claim 16 wherein said plant cell is further transformed] A method of modifying fiber color in a cotton plant, said method comprising:

transforming a cotton plant cell with a first DNA construct comprising a DNA sequence comprising i) a sequence selected from the group consisting of SEQ ID NO:15 and nucleotides 65-4163 of SEQ ID NO:7, and ii) an open reading frame encoding a protein selected from the group consisting of tyrosinase, tryptophanase and indole oxygenase;

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transforming said cotton plant cell with a second DNA construct according to Claim 9 or 10;

and regenerating a cotton plant comprising fiber tissue from said cotton plant cell,  
wherein said fiber tissue comprises a substrate for said protein, and wherein said protein reacts  
with said substrate to produce a pigment, whereby the color of said fiber is modified, and  
wherein the open reading frame of the DNA sequence from the first DNA construct encodes a  
different protein than the open reading frame of the second DNA construct.

Claim 19 (amended). The method of Claim 18 wherein said pigment is melanin and said  
[proteins are encoded by] open reading frames are *tyrA* and ORF438.

Claim 20 (amended). The method of Claim 18 wherein said pigment is indigo and said  
[proteins are encoded by] open reading frames are *tna* and *pig*.

Claim 22 (twice amended). The method of Claim 14 wherein said fiber tissue is [obtained  
from a cotton] in the burr.

Claim 44 (five times amended). A recombinant DNA sequence comprising as operably  
joined components in the direction of transcription: a transcriptional initiation region functional  
in a cotton plant cell and an open reading frame encoding an enzyme in a biosynthetic pathway of  
melanin or indigo, wherein said transcriptional initiation region is selected from the group  
consisting of:

- a. nucleotides 65-4163 of SEQ ID NO:7, and
- b. SEQ ID NO:15.

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Claim 51 (twice amended). [The] ~~A~~ DNA construct comprising the DNA sequence of Claim 44.

Claim 53 (twice amended). A cotton plant cell comprising the DNA construct of Claim 51.

Claim 54 (twice amended). A cotton plant comprising the plant cell of Claim 53.

Claim 59 (thrice amended). [A] An isolated DNA sequence comprising a transcriptional initiation region functional in a cotton plant cell, wherein said transcriptional incitation region is selected from the group consisting of:

- a. nucleotides 65-4163 of SEQ ID NO:7, and
- b. SEQ ID NO:15.

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3. The following is an examiner's statement of reasons for allowance:

A sequence search revealed that SEQ ID NO:15 is identical to the rac13 5' upstream sequence disclosed in Figure 5 of WO 96/40924 and enabled as a promoter in Example 1 of U.S. Patent 6,166,301. Hence, SEQ ID NO:15, as disclosed in the instant application is enabled as a promoter *per se*. The 4-4 5' upstream region comprising nucleotides 65-4163 of SEQ ID NO:7 is enabled as a promoter by the combined teachings of Examples 5, 7, and 9 in the instant specification, as clarified in Applicant's response filed 2/19/02. Furthermore, because the 4-4 cDNA sequence of SEQ ID NO:1 was used as a probe to isolate the genomic clone comprising the promoter of SEQ ID NO:7, and the Rac13 cDNA sequence of SEQ ID NO:12 was used as a probe to isolate the genomic clone comprising the promoter of SEQ ID NO:15 (see Examples 2 and 4), the isolated DNA sequences of SEQ ID NO:1 and SEQ ID NO:12 are likewise enabled by the instant specification.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."



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***Oath/Declaration***

4. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

It does not state that the person making the oath or declaration in a continuation-in-part application filed under the conditions specified in 35 U.S.C. 120 which discloses and claims subject matter in addition to that disclosed in the prior copending application, acknowledges the duty to disclose to the Office all information known to the person to be material to patentability as defined in 37 CFR 1.56 which occurred between the filing date of the prior application and the national or PCT international filing date of the continuation-in-part application.

Although Applicant has satisfied the duty to disclose requirement with respect to U.S.

Application Serial No. 08/480,178, Applicant has not satisfied the requirement with respect to PCT Application PCT/US96/09897, of which the instant application is a continuation-in-part application.

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5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amy J. Nelson whose telephone number is (703) 306-3218. The examiner can normally be reached on Monday-Friday from 8:30 AM - 5:00 PM.

The fax phone number for this Group is (703) 308-4242 or (703) 305-3014.

Any inquiry of a general nature or relating to the status of this application, or if the examiner cannot be reached as indicated above, should be directed to the legal analyst, Gwendolyn Payne, whose telephone number is (703) 305-2475.



**AMY J. NELSON, PH.D.  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600**

Amy J. Nelson, Ph.D.

July 17, 2002